

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554
JUL 13 1 01 PM '92

PR Docket No. 92-210

In the Matter of

Amendment of Part 90
of the Commission's Rules
Governing Extended
Implementation Periods

RM-7974

NOTICE OF PROPOSED RULE MAKING

Adopted: September 9, 1992; Released: October 13, 1992

Comment Date: November 16, 1992

Reply Comment Date: December 1, 1992

By the Commission: Commissioner Quello concurring.

I. INTRODUCTION

1. We are issuing this *Notice of Proposed Rule Making* on our own motion to solicit comment on a proposal to amend Section 90.629 of our Rules, 47 C.F.R. § 90.629, governing extended implementation schedules, by (1) extending the rule's applicability to Specialized Mobile Radio (SMR) Category applicants, (2) lengthening the "slow growth" period from three to five years, (3) eliminating the fleet-size requirement for qualification for an extended implementation period, and (4) eliminating the annual reporting requirement.¹ These rule changes are designed to encourage the development of innovative and complex land mobile technologies and to ease the regulatory burden upon the licensees of such systems. We also propose to amend Sections 90.629 and 90.631 to clarify our policies with regard to licensees that do not fully meet their system construction benchmarks and channel loading requirements.

II. DISCUSSION

2. Pursuant to Section 90.629, applicants for frequencies in the Public Safety, Industrial/Land Transportation, Business, and General Categories may, upon the proper showing, be given an extended period of time for constructing and placing a station in operation. Ordinarily, these licensees are required to have conventional systems constructed and placed in operation within eight months of

licensing,² and trunked systems constructed and placed in operation within one year of licensing,³ or their licenses will cancel automatically.⁴ Section 90.629 allows a three-year implementation schedule for applicants able to make one or more of the following showings: (1) the proposed system will serve a large fleet and will involve a multi-year cycle for planning, approval, funding, purchase and construction; (2) the proposed system will require longer than eight months to place in operation because of its purpose, size, or complexity; (3) the proposed system is to be a part of a coordinated or integrated area-wide system that will require more than a year to plan, approve, fund, and construct; or (4) the applicant is a local governmental agency and demonstrates that it is required by law to follow a multi-year cycle for the planning, approval, funding and purchasing of the proposed system.⁵

3. Recently, an increasing number of SMR applicants have expressed an interest in operating technically innovative, wide-area systems.⁶ Because of the complexity and expense of these systems, however, such applicants are frequently unable to construct and place them in operation within the one-year time frame generally applicable to trunked SMRs.⁷ We believe that these applicants have as compelling a need for an extended implementation period as applicants for frequencies in the categories listed in Section 90.629. Accordingly, we propose to amend Section 90.629 by extending its applicability to SMR Category applicants. This action will serve the public interest by easing the regulatory process where innovative, spectrally efficient communications systems are concerned, thereby promoting the development of these technologies.

4. We are also proposing to expand the extended implementation period set forth in Section 90.629 from three to up to five years. This proposal is premised on our experience that five years is a more realistic assessment of the amount of the extended period that may be required to construct and place large and complex communications systems in operation. We recognize, however, that less complex systems will not require the entire five-year period. We propose, therefore, that applicants that will require less than five years to construct and place their systems in operation request only extended implementation periods that are appropriate to their needs.

5. Relatedly, we are proposing modifications to Section 90.629 in accordance with certain proposals offered by UTC in its petition for rule making. Specifically, we propose to modify our rule that currently requires applicants for extended implementation to serve a fleet consisting of at least 200 mobile units. We believe that there is little or no correlation between the number of mobile units operating on an applicant's system and the need by the applicant for extended implementation. Secondly, we propose to include among those applicants eligible for extended implementation -- in addition to local government agencies -- any entity that may be required by law to follow a multi-year cycle for the planning, approval, funding, and

¹ On March 20, 1992, we received a petition for rule making (RM-7974) filed by the Utilities Telecommunications Council (UTC) proposing modifications to Section 90.629. We will incorporate certain of their proposals into this proceeding.

² 47 C.F.R. § 90.633(c).

³ 47 C.F.R. §§ 90.631(e) and (f).

⁴ 47 C.F.R. § 90.633(d)(conventional); 47 C.F.R. §§ 90.631(e)

and (f)(trunked).

⁵ 47 C.F.R. §§ 90.629(a)(1)-(4).

⁶ See, e.g., *In re Fleet Call, Inc.*, 6 FCC Rcd 1533 (1991); *American Mobile Data Communications, Inc.*, 4 FCC Rcd 3802 (1989).

⁷ See *In re Fleet Call*, 6 FCC Rcd at 1536.

purchasing of a proposed system.⁸ Thirdly, we propose to clarify Section 90.629(b) to indicate that licensees of trunked systems authorized an extended implementation period are required to load their systems to the same level (70 mobiles per channel within 5 years of authorization) as those licensees of trunked systems not authorized an extended implementation period (see § 90.631(b)).⁹

6. Finally, we are proposing to eliminate the current annual reporting requirement that is used to ensure a licensee's compliance with its authorized implementation period. We will eliminate this burdensome requirement and instead propose to (1) place a condition on the licensee's authorization expressly stating that if the system is not constructed and placed in operation within the authorized time and in accordance with the licensee's approved implementation schedule,¹⁰ the authorization will be modified to reflect the loss of all channels not constructed and placed in operation at the base station locations identified in the implementation schedule and to reflect the retention of only those base stations constructed and placed in operation in accordance with the implementation schedule; and (2) reserve the right to request, at any time prior to the end of the implementation period, evidence that a licensee has met the implementation benchmarks identified in its implementation schedule. Commenters are invited to address all aspects of our proposals to amend Section 90.629 and Section 90.631.

III. PROCEDURAL MATTERS

Ex parte Rules - Non-Restricted Proceeding

7. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's Rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

Initial Regulatory Flexibility Analysis

8. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The proposed rule changes set forth in this *Notice* relieve certain regulatory responsibilities and have no negative economic consequences. The Secretary shall send a copy of this *Notice of Proposed Rule Making*, including the certification, to the Chief Counsel for Advocacy of the Small Business Admin-

istration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

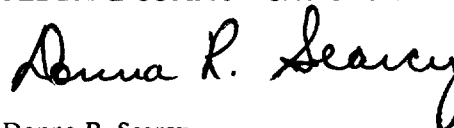
Comment Dates

9. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before **November 16, 1992** and reply comments on or before **December 1, 1992**. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you wish for each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

10. For further information concerning this proceeding, contact Karen Kincaid, Private Radio Bureau, Room 5202, Federal Communications Commission, Washington, D.C. 20554, telephone (202) 634-2443.

11. Authority for issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r).

FEDERAL COMMUNICATIONS COMMISSION



Donna R. Searcy
Secretary

APPENDIX

47 C.F.R. Part 90 is proposed to be amended as follows:

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

⁸ UTC also proposes that utilities planning to convert a conventional system to a system using trunked technology be permitted to construct and place their system in operation in accordance with an extended implementation schedule. We believe that system conversions of this kind, if sufficiently complex, could qualify for extended implementation under the proposed Section 90.629(a)(1) of our Rules, wherein extended implementation is granted if a lengthy period of time is required to construct and place a system in operation due to the "purpose, size, or complexity" of the system.

⁹ In addition to modifying Section 90.629(b) as indicated, we will modify both Sections 90.629(b) and 90.631(b) to clarify our policy with regard to licensees that have not fully met our

channel loading requirements. That is, for all licensees of trunked systems -- whether granted an extended implementation period or not -- if after five years of initial license grant all channels in the licensee's category are assigned in the system's geographic area, authorization for trunked channels not loaded to 70 mobile stations cancels automatically at a rate that allows the licensee to retain one channel for every 100 mobiles loaded, plus one additional channel.

¹⁰ The implementation schedule submitted by an applicant requesting an extended implementation period must include benchmarks for construction of proposed base stations (including identification of channels to be "constructed" at each station at each of the indicated benchmarks).

2. 47 C.F.R. § 90.629 is amended by redesignating paragraph (c) as paragraph (d), adding a new paragraph (c), and revising the title, the introductory paragraph, and paragraphs (a) and (b) to read as follows:

§ 90.629 Extended implementation period.

Applicants for either trunked or conventional operations may be authorized a period of up to five (5) years for constructing and placing a system in operation in accordance with the following:

(a) The applicant submits a justification for an extended implementation period. The justification must include an implementation schedule, *including* a description of the applicant's proposed system, benchmarks for construction of proposed base stations (including identification of channels to be "constructed" at each station at each of the indicated benchmarks), and must show that:

(1) The proposed system will require longer than eight months (if a conventional system) or one year (if a trunked system) to construct and place in operation because of its purpose, size, or complexity; or

(2) The proposed system is to be part of a coordinated or integrated wide-area system which will require more than eight months (if a conventional system) or one year (if a trunked system) to plan, approve, fund, purchase, construct, and place in operation; or

(3) The applicant is required by law to follow a multi-year cycle for planning, approval, funding, and purchasing the proposed system.

(b) Authorizations under this Section are conditioned upon the licensee constructing and placing its system in operation within the authorized implementation period and in accordance with an approved implementation schedule. If the licensee fails to construct and place its system in operation within the authorized implementation period and in accordance with the approved implementation schedule, all channels not constructed and placed in operation at the base station locations identified in the implementation schedule and all base stations not constructed and placed in operation in accordance with the implementation schedule will be deleted from the licensee's authorization. If at the end of five years, all channels in the licensee's category are assigned in the system's geographic area, authorization for trunked channels not loaded to 70 mobile stations cancels automatically at a rate that allows the licensee to retain one channel for every 100 mobiles loaded, plus one additional channel. Conventional channels not loaded to 70 mobile units may be subject to shared use by the addition of other licensees.

(c) For purposes of this section:

(1) a system is not considered constructed unless all of the base stations in the system are constructed in accordance with the system description provided as per paragraph (a) of this section; and

(2) a conventional system is not considered placed in operation unless, for each base station in the system, at least one associated mobile station is also placed in operation (*see also* §§ 90.155(c) and 90.633(d)); and

(3) a trunked system is not considered placed in operation unless, for each base station in the system, at least two associated mobile stations, or one control station and one mobile station, are also placed in operation (*see also* § 90.631(f)).

3. 47 C.F.R. § 90.631 is amended by revising paragraph (b) to read as follows:

§ 90.631 Trunked systems loading, construction and authorization requirements.

(b) Each applicant for a trunked system shall certify that a minimum of 70 mobiles for each channel authorized will be placed in operation within five years of the initial license grant. Except as provided in paragraph (i) of this section, if at the end of five years a trunked system is not loaded to the prescribed levels and all channels in the licensee's category are assigned in the system's geographic area, authorization for trunked channels not loaded to 70 mobile stations cancels automatically at a rate that allows the licensee to retain one channel for every 100 mobiles loaded, plus one additional channel. If a trunked system has channels from more than one category, General Category channels are the first channels considered to cancel automatically. All licensees who are authorized initially before June 1, 1993, and are within their original license term or are within the term of a two-year authorization granted in accordance with paragraph (i) of this section are subject to this condition. A licensee that has had authorized channels cancelled due to failure to meet the above loading requirements will not be authorized to obtain additional channels to expand that same system for a period of six months from the date of cancellation.
